

R E M A R K S

Claims 1 to 8 and 10 to 17 as set forth in Appendix I of this paper are now pending in this case. Claim 1 has been amended as indicated.

Accordingly, applicants have revised the wording of Claim 1 to further emphasize that the second active component is a compound which is selected from the group consisting of the compounds enumerated in subsections (c) to (g) of the claim. No new matter has been added.

The Examiner has rejected Claims 1 to 8 and 10 to 17 under 35 U.S.C. §112, ¶2, as being indefinite because of the phrase "at least one" in the claims¹⁾. Applicants' amendment removes the referenced wording.

The Examiner further criticized that the nature of the second active component was unclear and suggested that the term "or" be entered after each of the subsections (c) to (g). Applicants have reworded the text of Claim 1 preceding subsections (c) to (g) to further emphasize that subsections (c) to (g) are the members of the Markush group introduced in the preceding text. The respective revision therefore removes any uncertainty concerning the nature of the second component of applicants' composition.

In light of the foregoing and the attached, the Examiner's reasons for rejecting Claims under 35 U.S.C. §112, ¶2, are no longer applicable. Withdrawal of the rejection is therefore respectfully solicited.

The Examiner has rejected Claims 1 to 8 and 10 to 17 under the judicially created doctrine of obviousness-type double patenting as being unpatentable in light of Claims 1 to 8 and 10 to 12 of **Schelberger et al.** (US 6,365,608). It is respectfully requested that the obviousness-type double patenting rejection be withdrawn in light of the provisions in 35 U.S.C. §121, 3rd sentence:

A patent issuing on an application with respect to which a requirement for restriction under this section has been made, or on an application filed as a result of such a requirement, shall not be used as a reference either in the Patent and Trademark Office

1) Subsection (d) of Claim 1 is the only occurrence of the requisite expression in the claims.

or in the courts against a divisional application or against the original application or any patent issued on either of them, if the divisional application is filed before the issuance of the patent on the other application.

The present application is a divisional application of the application which matured into *Schelberger et al.*'s patent **US 6,365,608**. The divisional application was necessitated by a restriction requirement which issued in the patent application, and the divisional application was filed prior to the issuance of *Schelberger et al.*'s patent **US 6,365,608**. *Schelberger et al.*'s patent **US 6,365,608** can therefore not be applied as a reference against this application. Favorable action is solicited.

In light of the foregoing and the attached, the application should now be in condition for allowance. Early action by the Examiner would be greatly appreciated.

Please charge any shortage in fees due in connection with the filing of this paper, including Extension of Time fees, to Deposit Account No. 11.0345. Please credit any excess fees to such deposit account.

Respectfully submitted,
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Encl.: THE LISTING OF CLAIMS (Appendix I)

HBK/BAS